

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS LIABILITY
LITIGATION

THIS DOCUMENT RELATES TO:

This relates to: 1:14-CV-12978-RWZ

MDL No. 1:13-md-2419-RWZ

**PETITION FOR APPROVAL OF COMPROMISE SETTLEMENT OF VIRGINIA
WRONGFUL DEATH CLAIM PURSUANT TO VA. CODE § 8.01-55**

Comes now Petitioner Robert Dana Bender, duly qualified as executor of the Estate of Ralph James Irace, Jr., (“Petitioner”), by his undersigned counsel, and respectfully petitions this Court pursuant to Va. Code § 8.01-55 to approve the settlement of this wrongful death action. A proposed Order approving the settlement is attached hereto as **Exhibit 1**.

Petitioner states as follows in support of his Petition:

A. Petitioner and His Virginia Wrongful Death Claim.

1. Decedent, Ralph J. Irace, Jr., died on October 12, 2012.
2. On December 20, 2012, Petitioner Robert D. Bender duly qualified as executor of the Estate of Ralph J. Irace, Jr., in the Circuit Court for the City of Roanoke, Virginia.
3. On March 6, 2013, Petitioner filed a Complaint against Respondents Insight Health Corp. (“Insight”), Image Guided Pain Management, P.C., John M. Mathis, M.D., and Robert F. O’Brien, M.D. (collectively “Respondents”) in the Circuit Court for the City of Roanoke, Virginia (Case No. CL13-577). In filing the Complaint, Petitioner acted in his capacity as personal representative of the estate of Ralph James Irace, Jr., and asserted an action for wrongful death against Respondents.

4. Respondents timely responded, denied liability, and filed cross-claims against one another.

5. The case was transferred to MDL 2419 in the U.S. District Court for the District of Massachusetts after the District of Massachusetts issued a Memorandum of Decision (May 15, 2015) (MDL 2419 Doc. No. 1131) and entered an Order (June 5, 2014) (MDL 2419 Doc. No. 1173) exercising “related to” bankruptcy jurisdiction over the case.

B. Resolution of Petitioner’s Wrongful Death Claim through Mediation and Settlement.

6. Petitioner and Respondents mediated this wrongful death action in conjunction with forty-six other cases involving 153 Plaintiffs, which had also been brought against Respondents in Virginia state courts and removed and/or transferred to MDL 2419. In February 2015, Respondents reached a global settlement of all wrongful death claims and personal injury cases, including Petitioner’s wrongful death claim, which had been transferred to MDL 2419.

7. The amount and terms of the global settlement are set forth in Settlement and Release Agreement (“Agreement”) of February 12, 2015. The Agreement incorporated First Amended Insight Claims Resolution Facility Procedures (“Procedures”), and these Procedures are attached hereto as **Exhibit 2**. The amount to be paid to Petitioner to settle his wrongful death claim will be determined by the Agreement and the Procedures, subject to approval by this honorable Court.

C. Approval of Agreement and Procedures by the U.S. Bankruptcy Court.

8. Following overwhelming support by voting parties, the Agreement and incorporated Procedures have been approved and confirmed by Judge Boroff of the U.S. Bankruptcy Court for the District of Massachusetts in an order entered May 20, 2015, which confirmed the Chapter 11 bankruptcy plan of New England Compounding Pharmacy, Inc. *See*

Findings of Fact, Conclusions of Law and Order Confirming the Third Amended Joint Chapter 11 Plan of New England Compounding Pharmacy, Inc., *In re: New England Compounding Pharmacy, Inc.*, Case No. 12-19882-HJB (Bankr. D. Mass. May 20, 2015) (Doc. No. 1355). No appeal from the order approving the plan has been filed, and the order confirming the Chapter 11 Plan is now a final order.

D. Current Disposition and Relief Requested.

9. Pursuant to the Agreement, Respondents have placed the total agreed upon settlement amount in escrow to resolve the 153 claims asserted in forty-seven separate personal injury and wrongful death actions against them in MDL 2419, which includes the sum of money to be paid to Petitioner for distribution to Decedent's statutory beneficiaries.

10. Petitioner has agreed to and signed the Agreement. Petitioner has also agreed to and signed a Mutual Release, which is attached hereto as **Exhibit 3**.

11. Decedent's statutory beneficiaries are Mary Irace, Laura Goldschmidt, and Susan O'Connor. None of these statutory beneficiaries is a minor or an incapacitated person.

12. Petitioner requests the Court's approval of the settlement of this wrongful death action pursuant to Va. Code Ann. § 8.01-55, according to and consistent with the provisions of the Agreement and the Procedures.

13. After completion of the process required by the Procedures for establishing the gross payment for the statutory beneficiaries, Petitioner will ask the Court to approve all distributions from such amount, including those to the decedent's statutory beneficiaries as provided in Va. Code Ann. § 8.01-53.

14. Petitioner and his undersigned counsel have concluded that Respondents' compromise of his wrongful death claim for damages, as set forth in the Agreement and

Procedures, represents fair compensation for the Petitioner's claim for wrongful death damages against the Respondents considering the uncertainties and expenses of litigation.

15. As required by Va. Code § 8.01-55, the parties in interest will either endorse the proposed Order, attached hereto as Exhibit 1, or be given notice of the hearing and proposed compromise as provided in Va. Code § 8.01-296 and/or Va. Code § 8.01-320.

16. Respondents are compromising Petitioner's wrongful death claim and alleged damages without admitting liability and specifically denying same.

WHEREFORE, pursuant to Va. Code § 8.01-55, Petitioner, by counsel, petitions this Court to approve the compromise of Petitioner's claim to damages.

Date: June 26, 2015

Respectfully Submitted

By: /s/ J. Scott Sexton
J. Scott Sexton (*pro hac vice*)
Gentry Locke Rakes & Moore
PO BOX 40013
ROANOKE, VA 24022-0013
T: (540) 983-9379
F: (540) 983-9468
sexton@gentrylocke.com

*Counsel for Plaintiff Robert Dana
Bender, Executor of the Estate Of
Ralph James Irace, Jr.*

CERTIFICATE OF SERVICE

I certify that, on June 26, 2015, this document was filed through the CM/ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ J. Scott Sexton
J. Scott Sexton